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Attorneys for Defendants
COUNTY OF CONTRA COSTA, JOSHUA PATZER, and
WARREN RUPF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAWN DAY, individually and as
successor in interest to the Estate of Steffen
Matthew Day,

Plaintiff,

vs.

COUNTY OF CONTRA COSTA;
JOSHUA PATZER; WARREN RUPF, and
Does 1 through 50, et al.,

Defendants.

Case No. C07-4335 PJH

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION ON BEHALF OF
DEFENDANTS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JAMES V.
FITZGERALD, III, ESQ. WITH
SUPPORTING EVIDENCE; PROPOSED
ORDER**

Date: September 10, 2008
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton
Dept: Courtroom 3, 17th Floor (SF)

NOTICE IS HEREBY GIVEN that on September 10, 2008, at 9:00 a.m. or as soon
thereafter as this matter may be heard by the above-entitled U.S. District Court, Courtroom 3 (17th
Floor), located at 450 Golden Gate Avenue, San Francisco, CA, Defendants COUNTY OF
CONTRA COSTA, JOSHUA PATZER and WARREN RUPF ("Defendants"), will and hereby
do move the Court for Summary Judgment and/or Summary Adjudication against Plaintiff on the
grounds that there are no genuine issues as to any material facts and that the moving parties are
entitled to judgment as a matter of law. More specifically, Defendant PATZER's actions in
relation to the shooting incident of August 15, 2006, were objectively reasonable under the

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circumstances per the Fourth Amendment and related state law negligence and other state law claims. If there is a triable issue as to whether or not there was any constitutional violation per the Fourth Amendment, Defendant PATZER is entitled to qualified immunity for such constitutional claim. Also, Defendants did not violate Plaintiff's Fourteenth Amendment rights to a parental relationship with his minor son Decedent. Plaintiff has not set forth any evidence of a Monell claim. Further, Plaintiff's state claims fail independently as well and/or are subject to California immunities for peace officers. As such, Defendants are entitled to judgment as a matter of law as to all claims, or in the alternative, summary adjudication.

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of James V. Fitzgerald, III, and attached exhibits to such declaration, and any and all pleadings and papers on file in this action, oral argument and upon such other matters as may be presented to the Court at the time of the hearing.

Dated: August 5, 2008

McNAMARA, DODGE, NEY, BEATTY, SLATTERY,
 PFALZER, BORGES & BROTHERS LLP

By: 

James V. Fitzgerald, III / Noah G. Blechman
 Attorneys for Defendants
 COUNTY OF CONTRA COSTA, JOSHUA PATZER,
 and WARREN RUPF

PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

I hereby declare that I am a citizen of the United States, am over the age of eighteen years, and not a party to the within action; my business address is 1211 Newell Avenue, Walnut Creek, California 94596.

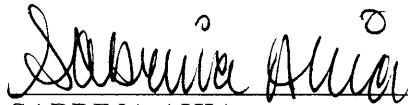
On this date I served the foregoing **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION ON BEHALF OF DEFENDANTS** on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as listed below for mailing. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid, in the United States Post Office mail box at Walnut Creek, California, addressed as follows:

Attorneys For Plaintiff:

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Phone: 925-947-1147
Fax: 925-947-1131

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 5, 2008 at Walnut Creek, California.


SABRINA AHIA